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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 169

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian,
Petitioner,

v.

KAKU NAGANO

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court for the Northern District of Illinois, Eastern Division (R. 33-37), is reported in 88 F. Supp. 897. The opinion of the Court of Appeals for the Seventh Circuit (R. 54-65) is reported in 187 F. 2d 759.

JURISDICTION

The judgment of the Court of Appeals was entered on February 26, 1951 (R. 65). A timely petition for rehearing was denied on April 4, 1951

(R. 66). The petition for a writ of certiorari was filed on July 3, 1951, and was granted on October 8, 1951 (R. 69). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the provision of Section 39 of the Trading With the Enemy Act that no property of any national of Germany or Japan vested after December 17, 1941, shall be returned to the former owner prohibits recovery of such property in a suit brought under Section 9(a) of the Act by a Japanese citizen, regardless of whether the plaintiff would otherwise be eligible to maintain suit under Section 9(a).

2. Whether a citizen of Japan, who lived in Japan continuously from 1924 to 1950 for the purpose of procuring a Japanese education for her children and arranging Japanese marriages for her daughters, was "resident within" Japan and therefore an "enemy" ineligible to maintain suit under Section 9(a).

STATUTES INVOLVED

The relevant provisions of the Trading With the Enemy Act, as amended, of the Executive Orders issued thereunder, and of other pertinent statutes and treaties, are set forth in the Appendix, *infra*, pp. 55-73.

STATEMENT

By Vesting Order No. 813, dated February 2, 1943, the Alien Property Custodian[1] vested in himself 8,780 shares of the common stock of the Fuji Trading Company, an Illinois corporation, as the property of the respondent Kaku Nagano, upon a finding that she was a national of Japan, a designated enemy country (R. 10-11).

On December 19, 1947, respondent filed in the District Court for the Northern District of Illinois (Eastern Division) a compiaint under § 9(a) of the Trading With the Enemy Act. She alleged, generally, that she was a permanent resident of the United States who had been "physically but temporarily" in Japan without having abandoned or intended to abandon her domicile in the United States and that she was not an "enemy" or a "national of a designated enemy country" under the Trading With the Enemy Act (R. 2, 3).

The following specific facts were alleged in the complaint: Respondent was born in Japan in 1892 and is a Japanese citizen (R. 2, 16). In 1914 she was married in Japan to Shinsaku Nagano, a native-born citizen of Japan who had been ad-

[1] By Executive Order No. 9788, October 14, 1946, 11 F. R. 11981, the authority, rights, privileges and powers of the Alien Property Custodian were transferred to the Attorney General. The term "Custodian" will be used to indicate either official, as the context may require. The complaint was originally brought against Tom C. Clark, Attorney General. J. Howard McGrath, Attorney General, was substituted as defendant on December 22, 1949 (R. 33).

mitted to the United States for permanent residence in 1906 (R. 2, 5). A daughter was born to them in Japan in 1914 (R. 5). The following year, respondent was admitted to the United States for permanent residence (R. 5, 6), but the daughter was left in Japan in the care of respondent's mother (R. 6). In 1916, a son was born in Chicago (R. 6). In 1919 the Naganos and their son went to Japan and, while there, a second daughter was born (R. 6). Both daughters remained in Japan with respondent's mother while the parents and son returned to this country (R. 6). In 1923 (R. 19) or 1924, the respondent, with her husband and son, again visited Japan (R. 6). This time, however, she remained in Japan, together with the daughters and the son, when the father returned to the United States (R. 6). Aside from a nine months' visit to the United States beginning in September 1932 (R. 7, 30-31, 49), respondent was in Japan with her children from 1923 or 1924 until 1950, when she again entered the United States (R. 49).[2] Her husband visited her in Japan

[2] In exclusion proceedings conducted by the Immigration and Naturalization Service, respondent testified that she had visited the United States from September 20, 1929, to April 1930 (R. 49). This visit "cannot be verified" by the Immigration Service (R. 49) and the complaint contains no allegation of such visit.

These proceedings resulted in the entry by the Assistant Commissioner, Adjudications Division, of an order, dated August 19, 1950, permitting respondent to reenter the United States as a "returning resident." The Assistant Commis-

for several months each year after 1924, except for the period 1932-1933 and during the war (R. 7). Respondent's purposes in going to Japan in 1924 and remaining there were to provide a Japanese education for the son, then aged eight, and to make arrangements in Japan for the marriages of the daughters, then aged ten and four (R. 6).

Petitioner moved to dismiss the complaint for failure to state a claim (R. 28). The District Court granted the motion and dismissed the action. The court held that, even though respondent's legal domicile may have remained in the United States, she was a person "resident within" Japan during the war under § 2(a) of the Trading With the Enemy Act, and therefore an enemy ineligible to bring suit under § 9(a) of the Act. Rejecting "the alleged family necessity relied on by [respondent] as an explanation for her long stay in Japan," the court held that "the facts alleged by [respondent] show that her residence in Japan was deliberate, whatever its motivation" (R. 35). The District Court relied solely on § 2(a), and rejected the Government's alternative contention that § 39, prohibiting returns to nationals of Japan, was also a bar to recovery (R. 33-38).

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sioner held that the evidence before him supported the conclusion that respondent was then returning from a temporary visit abroad and that she had never voluntarily relinquished her domicile in the United States (R. 49-51).

The Court of Appeals for the Seventh Circuit reversed, holding (1) that respondent was not "resident within" Japan inasmuch as, on the facts alleged, she had never intended to abandon her "permanent residence" in the United States; and (2) that § 39 did not bar respondent's recovery (R. 54-65).[3]

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that § 39 of the Trading With the Enemy Act did not bar respondent's suit.

2. In holding that respondent was not an "enemy" for purposes of § 9(a) of the Trading With the Enemy Act.

3. In reversing the judgment of the District Court.

[3] Shinsaku Nagano, the husband of respondent and a citizen of Japan, brought a companion suit under § 9(a) to recover, as his own property, 3,105 of the 8,780 vested shares. The court below, reversing the District Court, held the husband entitled to the 3,105 shares and directed the entry of judgment for him for the recovery of those shares. *Shinsaku Nagano* v. *McGrath*, 187 F. 2d 753 (C. A. 7). The court did not pass on the applicability of § 39 as a bar to the husband's recovery. No review of that decision has been sought. The husband, as a citizen of Japan who was not present there during the war but was in the United States, is presumably eligible for an administrative return of his property under § 32(a)(2)(D) of the Act (60 Stat. 50, 50 U. S. C. App. 32).

SUMMARY OF ARGUMENT

I

On its face, § 39 of the Trading With the Enemy Act clearly bars the present suit for return of vested property. It applies to all property vested after December 17, 1941, and imposes a flat prohibition against the return of any such property to nationals of Germany or Japan. This prohibition is subject to only one exception, not here applicable, permitting administrative return under § 32 of the Act.

As so construed, § 39 is consistent with, and implements, the scheme of the Act as a whole. Section 32, adopted in 1946, permits administrative returns, when found to be in the interest of the United States, to nationals of Germany and Japan who were not present in enemy territory during the war. Respondent, having been so present, is not eligible for such a return. To permit her to recover under § 9(a) would be to give her as a matter of right what she could not obtain as a matter of grace under § 32.

Section 39, as thus construed, is also consistent with the prior historical development of the Act. After World War I, the Treaty of Berlin, by the incorporation of certain provisions of the Treaty of Versailles, recognized the right of the United States to retain the seized assets of German nationals, wherever resident, as security for American war claims, and the obligation of the German

Government to compensate its nationals in respect of such assets. This policy of holding vested property as security for American war claims, although departed from in the Settlement of War Claims Act of 1928, was reinstated by the Harrison resolution of 1934. The War Claims Act of 1948, of which § 39 is a part, adopts the same policy. In thus providing for the retention of vested German and Japanese property as a fund out of which to pay American war claimants, Congress recognized that its prohibition of return to "nationals" of those countries might result in a denial of return to German and Japanese citizens resident outside the enemy countries. The Senate Committee refused to adopt amendments presented to it to change that result.

Respondent is a "national" of Japan in every sense of the word: she is a "national * * * of a foreign country [Japan]" within Executive Order No. 8389, as amended, dealing with "freezing" of foreign funds; for purposes of the vesting of property under Executive Order No. 9193 she is a "national of a designated enemy country [Japan]" as a Japanese citizen who was "within" Japan during the war; and she is a "national" of Japan as that term is normally used in statutory and international law. She is thus within the bar of § 39.

II

Respondent was also barred from maintaining suit under § 9(a) as a person "resident within" Japan during the war and hence an "enemy" under § 2. While the words "resident within" in § 2 are ambiguous, the legislative history of the section discloses that Congress intended to include persons living in enemy countries for other than transitory purposes, and to exclude only persons under constraint and transients. To read the definition of "enemy" in § 2 as including persons who, though not domiciled there, were voluntarily living in enemy territory for other than merely temporary purposes accords more nearly with the scheme of both the seizure provisions of the Act, which were drawn on the premise that the presence of the owner within enemy territory put his American property within the reach of the enemy government, and of the related sections of the Act prohibiting trade with an "enemy" during war time.

In any event, the 1941 amendments to § 5 (b) of the Act, the Executive Orders issued thereunder, and the provisions of § 32, added in 1946, authorized vesting of property of, and denied administrative return to, an enemy citizen who was present in enemy territory during the war. In order to give effect to those amendments, such a citizen, so present, should now be deemed an "enemy" for all purposes under the Act. Cf. *Clark* v. *Uebersee Finanz-Korp., A.G.*, 332 U.S. 480, 488.

ARGUMENT

I

Section 39 of the Trading With the Enemy Act Prohibits Recovery Under Section 9(a) of the Act by Respondent

A. *The terms of Section 39, as well as the present structure of the Act, bar the recovery of vested property by a national of Japan under Section 9 (a)*

The Court of Appeals for the Seventh Circuit recognized in the instant case (R. 60) that:

> . . . if Section 39 is to be taken at its literal face value, it is the law that a citizen of Japan is a national of that nation and that as such plaintiff may not recover her property even though Section 9(a) giving her right of action has not been expressly repealed.

Similarly, the Court of Appeals for the District of Columbia Circuit in *Guessefeldt* v. *McGrath*, (Guessefeldt record 25), No. 204 this Term, said: "the statute is quite specific."

The relevant language of § 39 (set out in full at Appendix, p. 64, *infra*) is:

> No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof * * *. Nothing in this section shall be construed to repeal or otherwise affect the operation of the provisions of section 32 of this Act * * *.

This is a flat, unqualified prohibition of return of vested property to German or Japanese nationals. The prohibition applies by its terms to all German and Japanese property vested during World War II; Section 39 says "no property * * * vested * * * at any time after December 17, 1941[4] * * * shall be returned * * *."[5] To this prohibition only one exception, not here applicable (see, *infra*, pp. 12-13), is made; notwithstanding § 39, return may be made under § 32 of the Act. This serves to emphasize that return by any procedure other than that of § 32 is prohibited. It would be hard to draft language which more clearly precludes returns to persons who, like respondent (see *infra*, pp. 32-37), are "nationals" of Germany or Japan.

The same result follows when we read § 39 with the rest of the Act, as we are bound to do, as parts of "an integrated whole". *Markham* v. *Cabell*, 326 U. S. 404, 411. The whole of the Act must be read to give it "the most harmonious, comprehensive meaning possible." *Clark* v. *Uebersee Finanz-Korp., A. G.*, 332 U. S. 480, 488.

[4] On December 18, 1941, the First War Powers Act amended § 5(b) of the Trading With the Enemy Act to confer power to vest property of foreign "nationals". See *infra*, pp. 20-21. It is under § 5(b) as so amended, and Executive Orders 9095 and 9193 issued pursuant thereto, that World War II seizures were made, including the vesting in this case (R. 10-11).

[5] The phraseology of the section makes it clear that it precludes any return after the date of its enactment, regardless of when the claim or suit may have been filed.

Section 9(a) is one of two "return" provisions in the Act, the other being § 32, which was enacted in 1946. Like § 39, section 32 deals with all World War II vestings; it applies to "any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to Dec. 18, 1941)." As to returns, § 32 is more liberal than § 9(a). Under § 9(a) an "enemy" may not receive an administrative return or maintain a suit for return, while under § 32 discretionary administrative returns may be made to certain classes of persons who are technically "enemies" as that term is defined in the Act. Return under § 32 may, however, be made only on an administrative finding that the return "is in the interest of the United States" (§ 32(a)(5), *infra*, p. 64) and action under it is not subject to judicial review, the claimant being confined to his more limited right to judicial relief under § 9(a). *McGrath* v. *Zander*, 177 F. 2d 649, 651-2 (C. A. D. C.); *Feyerabend* v. *McGrath*, 189 F. 2d 694 (C. A. D. C.). Typical of the returns made under § 32 are those to Frenchmen and Belgians, who were technically enemies as residents of territory occupied by the enemy (§ 2), and to Germans who were persecuted by their own country on political, racial or religious grounds. Section 32(a)(2)(C) and (D), *infra*, p. 63.

Under § 32 the Custodian is prohibited from re-

turning the property in suit to respondent, for one class of claimants to whom returns are prohibited by that section is:

> an individual who was at any time after December 7, 1941, a citizen or subject of [Germany, Japan] . . . and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present . . . in the territory of such nation . . . [§ 32(a)(2)(D)].

On the allegations of the complaint and the admitted facts, respondent was a citizen of Japan and present in the territory of Japan from December 7, 1941, to her entry into the United States in 1950 (R. 6-7, 16), whether or not she was an "enemy" under § 2 as "resident within" Japan. Thus, she is not eligible for a discretionary administrative return under § 32. To hold that she still may secure a return of the property under § 9(a) as a matter of right would be at least anomalous.

The interrelation between §§ 9(a), 32, and 39 is also illustrated by the situation of plaintiff's husband. On the literal language of § 39 he, too, would be barred from recovery under § 9(a) as a citizen and therefore a "national" of Japan. But from December 7, 1941, to the enactment of § 32 in 1946 he was in the United States and was not "present" in Japan, and accordingly would appear to be eligible for a return under § 32.[6]

[6] The Seventh Circuit held that he was entitled to recover as not a § 2 "enemy" but did not mention § 39. *Shinsaku Nagano* v. *McGrath*, 187 F. 2d 753. The Government did not petition for certiorari. See n. 3, p. 6, *supra*.

The net result is that citizens of Germany and Japan may not recover vested property under § 9(a), but that they may obtain returns under § 32 as a matter of administrative discretion if they were not in German or Japanese territory during the period 1941-1946, and if the Attorney General finds that such action is in the interest of the United States. This result preserves the preferred position which Congress gave in § 32 to citizens of Germany and Japan who were not present in enemy territory during the war, and to persecuted persons. The result appears to be reasonable and consistent, "harmonious, comprehensive"; it permits each section to "fulfill its mission". Cf. *Clark* v. *Uebersee Finanz-Korp., A. G.*, 332 U. S. 480, 488-489. On the other hand, if § 39 is held not to apply to suits under § 9(a), then the emphatic opening words of § 39—"No property * * * shall be returned"—have no meaning at all, except possibly as a precatory declaration of future Congressional policy.

In *Guessefeldt* v. *McGrath*, No. 204 this Term, the Court of Appeals for the District of Columbia Circuit reached the result that we believe the language and the scheme of the Act require, and held that a citizen of Germany was barred from recovery under § 9(a) by § 39, although on the pleadings in that case he had not been "resident within" Germany and so was not an "enemy" within § 2 of the Act. It said (*Guessefeldt* record 25-6):

> The issue before us then is simply this, has Section 39 of the Act, which prohibits return of World War II vested property to a national of Germany, prevented recovery of such property by a German citizen. We must conclude that the present law precludes a recovery. Although we can sympathize with the situation in which the appellant finds himself, the statute is quite specific. Concededly the appellant is and always has been a German citizen, and a citizen is necessarily a national of the country of which he is a citizen (here Germany) * * *. Consequently, Section 39 operates as a complete bar to the appellant's suit.

B. *The history of the Act supports the conclusion that Section 39 bars recovery by a national of Japan.*

The court below felt constrained by the presumption against implied repeals to hold that § 39 had not revoked the right of nationals of Germany and Japan to recover under § 9(a) (R. 62). As to that, the Court of Appeals for the District of Columbia Circuit disagreed in the *Guessefeldt* case, No. 204 this Term, saying (*Guessefeldt* record 26):

> If Congress had intended to completely repeal Section 9(a) it would have so declared. So far, however, as Section 39 is in irreconcilable conflict with Section 9(a), it must be deemed to have superseded Section 9(a).

There is no question here of the complete repeal of § 9(a) by § 39. The later section merely abrogated the right of nationals of Germany and of Japan to recover by suit. Other foreign nationals and citizens of the United States, who are not

"enemies" within the Act, may still sue and recover under § 9(a). As to nationals of Germany and Japan, however, the command of § 39 that "no property" of such nationals "shall be returned" is plainly inconsistent with the "right to sue for return" (R. 59) conferred by § 9(a). Since Congress, while expressly saving rights under § 32, did not include § 9(a) in the saving provision, the rights formerly available under § 9(a) are *pro tanto* superseded by the later enactment.

The abrogation of the right of German and Japanese nationals to recover vested property was, moreover, a logical step in the development of the Act since 1917, as well as a step consistent with the 1946 amendments embodied in §§ 32 and 34.

1. *The World War I Act and Amendments.*— Under the 1917 Act property believed to be "enemy" owned was subject to seizure. "Enemy" included a person of any nationality "resident within" enemy territory, but it did not include citizens of Germany resident in the United States or in neutral countries unless they were "proclaimed" as "enemy" by the President. So the ordinary German not resident in Germany was entitled to recover his property under § 9(a). *Stadtmuller* v. *Miller,* 11 F. 2d 732 (C. A. 2); *Vowinckel* v. *First Federal Trust Co.,* 10 F. 2d 19 (C. A. 9).

In 1921 Congress passed Public Resolution No. 8 (42 Stat. 105), which declared an end to the war

and which also provided (§ 5) that all property of Germany and of all German nationals which had come into the possession of the United States or been made the subject of a "demand" (the World War I instrument of seizure) should be retained by the United States until Germany had made provision for the satisfaction of all claims against it by persons owing "permanent allegiance" to the United States who had suffered loss or damage through the acts of Germany or its agents. The substance of this Resolution was incorporated into the Treaty of Berlin, which was proclaimed on Nov. 14, 1921 (42 Stat. 1939). That treaty (Arts. I and II) also incorporated certain provisions of the Treaty of Versailles, including those of Arts. 297 and 298 and the Annex thereto,[7] by which, *inter alia*, the Allied and Associated Powers reserved the right to retain and liquidate all property of German nationals (Art. 297(b)), and Germany undertook to compensate her nationals for such retention of their property (Art. 297(i)) and agreed that "no claim or action" should be brought "by any German national, wherever resident", against any Allied or Associated Power or against any person "in respect of any act * * * with regard to his property" under "ex-

[7] These provisions formed part of Part X of the Treaty of Versailles, expressly incorporated by Art. II of the Treaty of Berlin.

ceptional war measures" (Annex, par. 2).[8] In *Klein* v. *Palmer*, 18 F. 2d 932 (C. A. 2), one of the plaintiffs was a citizen of Germany resident in the United States during the war who had not been proclaimed an enemy; he sued the Alien Property Custodian and a purchaser from him for the return of property seized under the Act and for damages. The court held that recovery was barred by these provisions of the Treaty. For other cases broadly applying these provisions of the Treaty, see *United States* v. *Chemical Foundation*, 272 U. S. 1, 11; *Munich Reinsurance Co.* v. *First Reinsurance Co.*, 6 F. 2d 742, 747-9 (C. A. 2); *Junkers* v. *Chemical Foundation*, 287 Fed. 597 (S. D. N. Y.); *Lange* v. *Wingrave*, 295 Fed. 565 (E. D. La.).[9]

The plan of holding seized property of German nationals as security for the performance by Germany of its obligations was followed in the main until 1928,[10] when the Settlement of War Claims

[8] For full text of the Versailles Treaty, see Sen. Doc. 348, 67th Cong., 4th sess., vol. III, pp. 3329-3522. Most of the provisions relevant for present purposes are set out in *Klein* v. *Palmer*, 18 F. 2d 932 (C. A. 2).

[9] The Treaty seems to have been overlooked in the *Stadtmuller* and *Vowinckel* cases (*supra*, p. 16). Vowinckel may not have been within the Treaty by reason of his preferred status under the Geneva Convention, as a Red Cross surgeon. See the opinions in his case, 10 F. 2d 19 (C. A. 9) and 15 F. 2d 872 (N. D. Calif.).

[10] There were a number of exceptions. For example, the Winslow Act in 1923 (42 Stat. 1511) permitted the return of not over $10,000 each to individual German claimants. Trad-

Act (45 Stat. 254) authorized the return of 80 per cent of the seized property upon the filing by the claimant of a consent to the postponement of the return of the remaining 20 per cent. Trading With the Enemy Act, §§ 9(b)(14) and (16), 9(m). This Act contemplated that American war claims would be paid out of a fund to be built up by the payment by Germany of awards of a Mixed Claims Commission. See, *Z & F Assets Corp.* v. *Hull*, 311 U. S. 470. Thus, in effect, that fund was substituted for the seized property as the security for American claimants.

Under these provisions returns to German citizens were made by administrative action or suit, § 9(c)—*i.e.*, by the same procedures as under § 9(a). Such returns of German property under § 9(b) of the Trading With the Enemy Act continued until 1934 when the Harrison Resolution (48 Stat. 1267, Appendix, p. 66, *infra*), postponed further returns as long as Germany continued in default on her obligations to pay such awards. This Resolution had the effect of cutting off the right of German nationals to recover under § 9(b). *Cummings* v. *Deutsche Bank*, 300 U. S. 115.

2. *World War II amendments.*—Germany never did pay up the arrears, and in 1939 World War II

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ing With the Enemy Act, § 9(b)(9). The history of the Act is traced in the concurring opinion in *Markham* v. *Cabell*, 326 U. S. 404, 413.

started in Europe. In the interval between the two wars Germany and other nations had developed and extended the techniques of economic warfare, and these, even before the United States became involved in the shooting war, were considered a threat to our economy and national interest. See, *Clark v. Uebersee Finanz-Korp., A. G.*, 332 U. S. 480, 484-486; United States Treasury Department, *Administration of the Wartime Financial and Property Controls of the United States Government* (1942), pp. 29-31.

The first counter-measure by the United States was the "freezing" of the assets here of Norway and Denmark and their "nationals" following the invasion of those countries in April of 1940. As the war in Europe spread, the controls were extended to cover all of continental Europe and parts of Asia, including Germany and Japan. Executive Order No. 8389, as amended by Executive Orders 8785 (June 14, 1941, 6 F. R. 2897) and 8832 (July 26, 1941, 6 F. R. 3715). "National" was defined in the Order as including "subject, citizen or resident." Sec. 5E(i). This definition was ratified by Congress by the Joint Resolution of May 7, 1940 (54 Stat. 179), and again on Dec. 18, 1941, by the First War Powers Act (§ 302, 55 Stat. 838, 840).

The First War Powers Act also gave the President authority to vest the property of "any foreign country or a national thereof". For purposes of vesting, the President reaffirmed the definition of

"national" promulgated in connection with the "freezing" program. Executive Order 9193 (July 6, 1942, 7 F. R. 5205) authorized vesting of certain types of property of nationals of foreign countries (patents and copyrights, ships, and corporate property as to which certain special determinations had been made) (§ 2(b), (d), (e)). As to other property it authorized vesting if the property was found to be that of a "national of a designated enemy country" (§ 2(a), (c), (f)). "National of a designated enemy country" was defined as including anyone who was a "national" of such country for freezing purposes but with the proviso that a person otherwise a "national" but not "within" a designated enemy country was not to be deemed a national of a designated enemy country unless the Alien Property Custodian made special findings, such as that the national interest required that he be so treated (§ 10(a)).[11] Thus, the order expressly authorized the vesting of property of persons who, like respondent, were citizens of the enemy country and actually present within that country during the war.

[11] Such a finding was made as to Mrs. Nagano. Vesting Order No. 813 (R. 10-11). In any event, Mrs. Nagano was "within" Japan, whether she be considered to have been "resident within" that country or not.

In accordance with the policy laid down in Executive Order 9193, it has not been the practice of the Custodian to vest the property of citizens of Germany and Japan who were present in the United States during the war unless there was reason to believe that they had acted for the enemy. See Annual Report, Office of Alien Property Custodian, 1945, p. 6.

This "logical extension" of the regulatory powers previously granted, by adding the authority to "vest", was designed to enable the President to make affirmative use of foreign-owned property in the interests of the United States and to assure "flexibility of control". S. Rep. 911, 77th Cong., 1st Sess., pp. 2-3; H. Rep. 1507, 77th Cong., 1st Sess., pp. 2-3; *Clark* v. *Uebersee Finanz Korp., A. G.*, 332 U. S. 480, 484; *Silesian-American Corporation* v. *Clark*, 332 U. S. 469, 475-477. The relationship between this expanded vesting power and the right to return conferred by § 9(a) to all persons who were not "enemies" under § 2 was apparently not considered by Congress. This Court dealt with one aspect of that problem in 1947 when it held that, while § 9(a) itself had not been amended, the § 2 definition of "enemy" had been broadened to discard its original territorial character and to reach persons "tainted" by ties to the enemy. The question of the precise degree of enemy affiliation needed to constitute "taint" was left to "await legislative or judicial clarification". *Clark* v. *Uebersee Finanz-Korp., A. G., supra*, at 490.

Even before the *Uebersee* decision, the shooting war had ended, although no treaties of peace had been signed, and Congress had begun to decide on the disposition of the vested property. In 1946 it enacted § 32, allowing discretionary administrative returns to technical but "non-hostile" enemies and, significantly, to citizens of enemy countries who had not been "present" between December 7,

1941, and the enactment of § 32, in the territory of the enemy country or in territory occupied by it. Returns were also allowed to enemy citizens persecuted on political, racial or religious grounds. Section 32(a)(2)(D). In 1946 Congress also enacted § 34, providing for the payment of the debts of the former owners of vested property to citizens of the United States, American corporations, and long-time residents of the United States.[12]

3. *The War Claims Act of 1948.*—In 1947, H. R. 4044 was reported by the House Committee on Interstate and Foreign Commerce. The bill provided for immediate payment of claims of American civilians who had been interned during the war following attack or invasion by Japan, for a subsequent report to Congress by a War Claims Commission of its recommendations with respect to the eventual payment of other war claims, and for the application to payment of such claims of the proceeds of vested property. As reported, and as passed by the House, it postponed payment of debt claims under § 34 until six months after the report of a War Claims Commission to be appointed and, as now, it prohibited the return of property of nationals of Germany or Japan to the

[12] The Court of Appeals in the instant case referred to the refusal of Congress, in adopting these provisions, to adopt a further provision amending § 9(a) (R. 63). The proposed provision would have barred suits under § 9(a) by *all foreign* nationals, and remitted them to a suit for just compensation. S. Rep. No. 1839, 79th Cong., 2d sess. (1946), p. 2. In § 39 Congress did adopt a much more limited provision denying return to German and Japanese nationals.

former owners. The "net proceeds" of vested German and Japanese property were to be covered into the Treasury. See H. Rep. 976, 80th Cong., 1st Sess.

A subcommittee of the Senate Committee on the Judiciary held extensive hearings on this bill. Representatives of creditors and others protested the postponement of the payment of debts, pointing out that the release of German assets under the Settlement of War Claims Act in 1928 had deprived creditors of their security and left many American claims unpaid. See *Hearings before a Sub-committee of the Senate Committee on the Judiciary,* 80th Cong., 2d sess., on H. R. 4044, pp. 5-12, 88-101, 138-148. Representatives of veterans' organizations protested the exclusion from the immediate benefits of the bill of members of the armed forces who had suffered maltreatment in prison camps during the war. Senate *Hearings, passim.* Other witnesses protested the non-return provision of the bill on the specific ground that the prohibition of returns to German and Japanese "nationals" would amount to an extension of the statutory definition of "enemy" to include enemy nationals who lived elsewhere than in enemy or enemy-occupied territory. Senate *Hearings,* pp. 197-198, 233, 235, 255.

The bill, as enacted, significantly followed the pattern set during the Senate hearings. The protests of the creditors were heeded, and the provision for postponement of the payment of debt

claims was dropped. The claims of the veterans were recognized, and members of the armed forces who had suffered maltreatment as prisoners of war were made eligible for benefits. Only the arguments of those who protested the blanket prohibition of returns to German and Japanese nationals were ignored; the principle of non-return of German and Japanese properties was retained, and both German and Japanese nationals were placed in the position in which the Harrison Resolution of 1934 had placed Germans with respect to World War I seizures.

The legislative history, moreover, contains repeated evidence of Congressional awareness that the term "national" would include enemy citizens wherever resident and whatever their personal disposition toward the enemy. Thus, the House Committee Report described the philosophy underlying the provision which became § 39 in the following terms:

> The policy of nonreturn and noncompensation is a sound public policy which should be enacted into law. It does not violate any concepts of international law or international morality. No essential difference exists between private property and public property in the case of Germany and Japan. For several years before World War II while Germany and Japan were preparing to make war upon the United States, property owned in the United States by the *citizens of both of these countries* was subject to rigid control of their respective governments. While the fiction of private ownership was retained, ac-

> tually property of *German and Japanese nationals in the United States* was widely used to accomplish the national objectives of those countries. [H. Rep. 976, 80th Cong., 1st Sess., p. 2. (Emphasis added.)]

At the Senate hearing, the attention of the Committee was even more explicitly called to the consequences of the use of the term "national" in the proposed legislation. One of the witnesses before the Senate Judiciary Subcommittee considering the bill was an attorney from the District of Columbia who described himself as a specialist in international law. Analyzing the proposed § 39 he pointed out:

> Section 2 of the Trading With the Enemy Act defines enemies under territorial principle, not on the basis of nationality. It terms enemies those who live in enemy country or enemy-occupied territory. It follows that the effect of this bill would be an extension of the statutory definition of enemies, so as to encompass enemy nationals who lived elsewhere than in enemy or enemy-occupied territory. [Hearings before a Subcommittee of the Senate Committee on the Judiciary, 80th Cong., 2d Sess., on H. R. 4044, p. 233.]

He listed as those who would fall within the scope of its language "Germans who left Germany possibly long before the war and now live, for instance, in South America or even in this country without having acquired another nationality" (*idem.* p. 234). To which Senator Cooper replied, "is there any reason that their property should be returned

to them any more than a German in Germany?" (*ibid.*). The same witness then submitted a proposal which would have excluded from the prohibition of § 39 German and Japanese nationals who resided outside of enemy or enemy-occupied territory, provided that they did not aid or abet the enemy (*idem.* p. 235). The amendment was not adopted by the Committee.

A second attorney expressing his opposition to the bill before the same subcommittee argued that it was objectionable because it failed to "discriminate between friendly aliens and unfriendly ones" (*idem.* p. 255). He called attention to the fact that "Japanese friendly aliens could not become American citizens" and urged that they should not be barred "because, technically, they are the nationals of Japan and, therefore, enemy aliens" (*ibid.*). He submitted that if the principle of nonreturn were adopted there should be "provision for the return of the property to that class of aliens * * * we designate as friendly * * *" (*ibid.*). No action was taken on his proposed change.

The subcommittee also had before it a statement by the Japanese-American Citizens League Anti-Discrimination Committee (*idem.* pp. 197-198) stressing that "on its face [§ 39] seems to deprive some Japanese aliens in the United States of their property". The League went on to recommend that "appropriate safeguards be written into the law" for the protection of Japanese nationals liv-

ing in this country. And this recommendation also was not adopted.

It seems clear that in enacting the War Claims Act of 1948, which added Section 39 to the Trading With the Enemy Act, Congress deliberately chose to reverse the policy of the Settlement of War Claims Act of 1928 and to adhere to the policy of the Treaty of Berlin and of the Harrison Resolution; that is, of devoting vested property of enemy governments and their nationals, wherever resident, to the payment of American claims. The 1948 Congress, it is clear, was primarily interested in assuring payment to American prisoners of war and other war claimants and it sought to do this by providing as large a war claims fund as was justly possible. And Congress believed it just and fair that German and Japanese assets, both public and private, should be marshalled for the purpose of satisfying these claims of American nationals arising out of Axis depredations. Since property of "nationals" of Germany and Japan had been vested during World War II pursuant to the authority conferred by the Executive Orders issued under § 5(b) of the Act (see p. 21, *supra*) Congress could properly consider such property as enemy property, and permit return of it only on the conditions and subject to the safeguards which Congress had prescribed in § 32 of the Act. The individual enemy nationals affected, the Congress declared, should look to their own governments for

compensation. 94 Cong. Rec. 551, 555, 556, 564. In this connection, Representative Hinshaw, who was in charge of the bill on the House floor, read into the Record a letter from the State Department declaring:

> It will be noted, therefore, that the policy of nonreturn of German and Japanese assets in the United States, as provided in section 1 of H. R. 4044, is in accord with that stipulated in international agreements in relation to external enemy assets concluded by the United States and other countries as a consequence of World War II. Moreover, it is assumed that any peace settlements with Germany and Japan will contain provisions for the nonreturn of German and Japanese assets, as well as provisions requiring Germany and Japan to pay compensation to their respective nationals for such assets. [*Idem.* p. 556.][13]

Representative Wadsworth commented during the debate that it had "become perfectly apparent

[13] The Treaty recently signed with Japan but not yet ratified provides for the retention of vested Japanese property, subject to an exception for:

> property of Japanese natural persons who during the war resided with the permission of the Government concerned in the territory of one of the Allied Powers, other than territory occupied by Japan, except property subjected to restrictions during the war and not released from such restrictions as of the date of the first coming into force of the present Treaty. [*Department of State Bulletin*, Vol. XXV, Aug. 27, 1951, p. 351.]

This exception would appear to offer no aid to the respondent, since her property was "restricted," *i.e.*, vested, and she resided in Japan during the war.

* * * that war today is total war and that the people of a country that goes to war under the government of that country must share the responsibility for what happens" (*idem.* p. 551). And Representative Dolliver declared that "if there is a Japanese national whose property is taken from him by the United States in the exigencies of war, then the duty to compensate that Japanese national rests not with us but with the Japanese Government" (*idem.* p. 564). And, when the bill came to the floor of the House, Congressman Cox, recognizing that the criterion of nationality left no room for distinguishing between the friendly and the unfriendly enemy national, observed that "many perfectly innocent people will, under the bill, lose their all". 94 Cong. Rec. 551.

Repeal by implication is, like other questions of construction, a matter of legislative intent. *Sutherland on Statutory Construction* (3d ed. 1943) § 2016. The question is to be resolved according to the ordinary rules of construction. *Posadas* v. *National City Bank,* 296 U. S. 497, 504. Particularly in the case of an Act which, like the Trading With the Enemy Act, has been frequently patched but never reconstructed (cf. *Clark* v. *Uebersee Finanz-Korp., A. G.,* 332 U. S. 480, 488-9), there is no reason to apply a presumption against repeal by implication so as to defeat the legislative purpose. It being clear that the dominant purpose of Congress in that part of the War Claims

Act which is § 39 was to cut off returns to German and Japanese nationals, that purpose must prevail even though the result is a cutting down of § 9(a) without express reference to that section. Cf. *United States* v. *Belt*, 319 U. S. 521; *S. E. C.* v. *Joiner Corp.*, 320 U. S. 344, 350.

The language and legislative history of § 39, read in the light of the active history of the Trading With the Enemy Act since 1917, leaves no doubt, we think, that Congress intended to bar the return of the property of German and Japanese nationals and to use the net proceeds, after payment of the debts of former owners to American creditors, for the relief of internees and prisoners of war who had suffered at the hands of Germany and Japan. Returns were still permitted under § 32 to German and Japanese nationals who were not present in the enemy country during the war or who were persecuted by their own governments for their politics, race, or religion. But return by any other procedure, including § 9(a), was cut off.[14]

[14] Even before the decision of the *Guessefeldt* case by the Court of Appeals for the District of Columbia Circuit, the majority of the courts which had considered the question had held that § 39 did operate to bar returns under § 9(a) to nationals of Germany and Japan. *Schill* v. *McGrath*, 89 F. Supp. 339 (S. D. N. Y.); *Lippmann* v. *McGrath*, 94 F. Supp., 1016 (S. D. Ill.); *Bellman* v. *Clark*, Civ. No. 47-229, not reported (S. D. N. Y., Nov. 8, 1948); *Mittler* v. *McGrath*, Civ. No. 3276-48, not reported (D. D. C. March 31, 1950); *Janner* v. *McGrath*, Civ. No. 3685-49, not reported (D. D. C. March 31,

C. *Respondent is a "national" of Japan within Section 39*

Respondent is admittedly a citizen of Japan (R. 2). As such, she is a "national" of Japan according to the definition in Executive Order No. 8389, as amended (*infra*, p. 70), the "freezing" order, which defines "national" to include "a subject, citizen or resident" (§ 5E(i)). That definition was made under the authority of § 5(b) of the Trading With the Enemy Act, as amended, and was twice ratified by Congress (Joint Resolution of May 7, 1940, 54 Stat. 179; First War Powers Act, 1941, 55 Stat. 840). (See *supra*, p. 20.[15]

Also, with respect to the authority to vest property conferred by § 5(b), the respondent is a

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1950). *Contra; Jinsha* v. *McGrath*, 90 F. Supp. 892 (D. (Haw.) and the district court in the instant case, *Nagano* v. *McGrath*, 88 F. Supp. 897 (N. D. Ill.).

[15] The Joint Resolution authorized the President to regulate transactions of "any foreign state or a national or political subdivision thereof, as defined by the President," and further provided that "Executive Order Numbered 8389 of April 10, 1940, and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed." Section 301 (3) of the First War Powers Act, 1941, similarly conferred power on the President "to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision." And § 302 of that Act "approved, ratified, and confirmed" "all acts, actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by, or pursuant to the direction of, the President or the Secretary of the Treasury" under the Trading With the Enemy Act.

"national of a designated enemy country" within Executive Order No. 9193, July 6, 1942, 7 F. R. 5205 (*infra*, pp. 71-73), which delegated to the Custodian the authority to vest under § 5(b), and which provided in § 10:

> The term "national" shall have the meaning prescribed in section 5 of Executive Order No. 8389, as amended: *provided, however*, that persons not within designated enemy countries (even though they may be within enemy-occupied countries or areas) shall not be deemed to be nationals of a designated enemy country unless the Alien Property Custodian determines: . . . (ii) that such person is a citizen or subject of a designated enemy country and within an enemy-occupied country or area; or (iii) that the national interest of the United States requires that such person be treated as a national of a designated enemy country.

Respondent is a citizen of Japan, hence a "national" under Executive Order No. 8389, and she was "within" Japan on the effective date of Executive Order No. 9193 (July 6, 1942), whether or not she was "resident within" that country for purposes of § 2 of the Act. Thus Executive Order 9193 expressly authorized the vesting of her property.

By 1948, when § 39 was added, the meaning of "national", as so defined, was well settled under the Trading With the Enemy Act. In using the term "national" in that section, Congress must be taken to have used it with that meaning. The Court of Appeals for the District of Columbia so

held in *Guessefeldt* v. *McGrath* (Guessefeldt record 25-6, 27-8). If Congress had intended that § 39 should apply only to the property of "enemies" as defined in § 2 (as the court below said, "forfeitable enemy property" (R. 64)), it had only to say so.

The Seventh Circuit, however, thought that respondent, as a "permanent resident" of the United States, was not within "the conception of citizenship of a foreign nation which Congress had in mind in defining a national" (R. 64). It also said that respondent was not a "citizen" of Japan "within the meaning of the word and its connotation recognized by judicial decisions", since she "on the averments of her complaint, owed no allegiance to Japan and had no reciprocal rights to protection by it", and "had no right to exercise any of the political or civil privileges of Japan" (R. 64). These statements as to the averments of the complaint are without support in the record, and if the complaint had contained such averments they would have been irrelevant here. The respondent admits her Japanese citizenship (R. 2, 16), and if "national" has any meaning at all, it includes a citizen.

Apart from the definitions adopted for purposes of the Trading With the Enemy Act, the term "national" in ordinary usage includes at a minimum citizens of the country in question. The term

"national" was thus defined in the Nationality Act of 1940 (§ 101, 54 Stat. 1137, 8 U. S. C. 501):

> (a) The term "national" means a person owing permanent allegiance to a state.
> (b) The term "national of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

While "national" is under that act a broader term than citizen [16] and includes some non-citizen nationals,[17] citizens of the United States are necessarily nationals of the United States.[18] Similarly,

[16] See *Brassert* v. *Biddle*, 59 F. Supp. 457, 462 (D. Conn.), affirmed, 148 F. 2d 134 (C. A. 2).

[17] For example, Filipinos had this status before the islands became independent in 1946. See *Cabebe* v. *Acheson*, 84 F. Supp. 639 (D. Haw.).

[18] There is nothing to the contrary in *McGrath* v. *Zander*, 177 F. 2d 649 (C. A. D. C.). Mrs. Zander acquired German citizenship under German law by marriage, without losing her American citizenship. The most that the case can stand for is the proposition that an American citizen does not cease to be deemed a national of the United States under the Act because she acquired a second or "dual" nationality, and because she had been detained against her will in the enemy country during the war. Furthermore, in the *Zander* case the Court of Appeals does not seem to have considered the question of the effect of § 39; in an earlier case the same court held that a plaintiff of dual German and Swiss citizenship was not entitled to recover under § 9(b) of the Act. *Von Zedtwitz* v. *Sutherland*, 26 F. 2d 525 (C. A. D. C.). The present case involves no problem of dual nationality.

under our law persons whose sole citizenship allegiance is to Japan are nationals of Japan.

In international law it is equally well settled that a citizen is a "national". Hyde states that "the citizen of the United States is necessarily also a national of the United States". *International Law, Chiefly as Interpreted and Applied in the United States* (2d ed. 1947) § 342. Moore says that "national character, in legal and diplomatic discussions, usually is denoted by the term 'citizenship'," and that "citizenship is the great source of national character." *Digest of International Law* (1906), Vol III, p. 273. See also, Wharton, *Law Lexicon* (14th ed., 1938), Black, *Law Dictionary* (1933); Bouvier, *Law Dictionary* (3d Revision, 1914). Similarly, both the Treaty of Versailles, *supra*, p. 17, and the recent Treaty with Japan, *supra*, p. 29, n. 13, recognized the use of the term "national" as applicable to citizens wherever resident, and the power of the United States to treat property of such "nationals" as enemy property.

The impact of the opinion of the court of appeals in this case is to reverse the effect of the 1940 and 1941 amendments of the Act, and to cut down the meaning of "national" as used in World War II legislation to the narrow confines of the 1917 definition of "enemy". This, it is clear, may not be done. Compare *Clark* v. *Uebersee Finanz-Korporation, A. G.*, 332 U. S. 480, 488-489.

D. *Section 39 presents no substantial constitutional question*

The court below held that the respondent was, under the averments of the complaint, a friendly alien resident in the United States and as such entitled to constitutional guarantees (R. 61). Resident or not, the respondent was not a "friendly alien" as long as the United States and Japan were at war. A subject of a nation at war with the United States, whether or not resident here, is an enemy at common law. *Techt* v. *Hughes*, 229 N. Y. 222, 128 N. E. 185; *Klein* v. *Palmer*, 18 F. 2d 932, 934 (C. A. 2). Nor does the fact that the respondent returned to the United States in 1950 change her status for purposes of the Trading With the Enemy Act. *Swiss Nat. Ins. Co.* v. *Miller*, 267 U. S. 42.

As a citizen of Japan, respondent, had she been in the United States, would have been subject to the drastic wartime power of the executive under the Alien Enemy Act of 1798 (1 Stat. 577, as amended, 40 Stat. 531, 50 U. S. C. 21) to arrest summarily, to intern, or to deport, in his discretion, all "natives, citizens, denizens and subjects" of an enemy country of the age of fourteen years and up, and she would not have been entitled to judicial review. *Ludecke* v. *Watkins*, 335 U. S. 160. Or, even if actually resident in the United States, she might have been proclaimed by the President to be an "enemy" for purposes of the Trading With the Enemy Act. Section 2(c).

This Court recently reviewed the cases relating to the status of enemy nationals in *Johnson* v. *Eisentrager*, 339 U. S. 763, 772-773. There the Court, speaking through Mr. Justice Jackson, said:

> American doctrine as to effect of war upon the status of nationals of belligerents took permanent shape following our first foreign war. Chancellor Kent, after considering the leading authorities of his time, declared the law to be that "* * * in war, the subjects of each country were enemies to each other, and bound to regard and treat each other as such." *Griswold* v. *Waddington*, 16 Johns. (N. Y.) 438, 480. If this was ever something of a fiction, it is one validated by the actualities of modern total warfare. Conscription, compulsory service and measures to mobilize every human and material resource and to utilize nationals—wherever they may be—in arms, intrigue and sabotage, attest the prophetic realism of what once may have seemed a doctrinaire and artificial principle. With confirmation of recent history, we may reiterate this Court's earlier teaching that in war "every individual of the one nation must acknowledge every individual of the other nation as his own enemy—because the enemy of his country." *The Rapid*, 8 Cranch 155, 161. See also *White* v. *Burnley*, 20 How. 235, 249; *Lamar* v. *Browne*, 92 U. S. 187, 194. And this without regard to his individual sentiments or disposition. *The Benito Estenger*, 176 U. S. 568, 571. The alien enemy is bound by an allegiance which commits him to lose no opportunity to forward the cause of our enemy; hence the United States, assuming him to be faithful to his allegiance, regards him as part of the enemy resources.

It is well settled that the confiscation of the property of an enemy national offends no constitutional limitation. *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 120; *United States* v. *Chemical Foundation*, 272 U. S. 1, 11; *Miller* v. *United States*, 11 Wall. 268, 305; *Brown* v. *United States*, 8 Cr. 110, 122; *Klein* v. *Palmer*, 18 F. 2d 932, 934 (C. A. 2). As this Court said in *Silesian-American Corporation* v. *Clark*, 332 U. S. 469, 475:

> There is no doubt but that under the war power, as heretofore interpreted by this Court, the United States, acting under a statute, may vest in itself the property of a national of an enemy nation.

II

Respondent Was "Resident Within" Japan and Therefore An "Enemy" for the Purpose of Section 9(a) of the Trading With the Enemy Act

Apart from any question of the application of § 39, respondent, as a person "resident within" Japan during the war, was an "enemy" and not entitled to sue under § 9(a). Section 2. The construction of the phrase "resident within" is important in litigation under the Act; it lies at the threshold of many suits under § 9(a) in which an individual is the plaintiff. Nationals of countries other than Germany and Japan, including citizens of the United States, may be "enemies" if "resident within" enemy or enemy-occupied territory. Not only is the property of such persons subject to seizure, but trade with an "enemy" as defined

in § 2 is forbidden by the Act. Sections 3, 7. See also §§ 8, 9(a), 12 and 14.

The Trading With the Enemy Act as adopted in 1917 authorized the President to seize "enemy" property (§ 7(c)). "Enemy" was defined primarily in terms of residence, specifically "any individual * * * of any nationality, resident within the territory * * * of any nation with which the United States is at war * * *" (§ 2(a)). The Act also provided a judicial remedy to any former owner of seized property who could establish that he was not a statutory enemy. Section 9(a); *Stoehr* v. *Wallace*, 255 U. S. 239; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51. While the effect of the amendment by the First War Powers Act of 1941 to § 5(b) of the Trading With the Enemy Act (55 Stat. 838, 50 U. S. C. App. 5(b)) has been to broaden the § 2 definition of "enemy" and so to widen the class of persons disqualified from suit under § 9(a) (*Clark* v. *Uebersee Finanz-Korp.*, 332 U. S. 480), one "resident within" enemy territory remains, as originally, an "enemy."

Respondent, who was born in Japan in 1892, was admitted to the Unites States for permanent residence in 1915 (R. 2, 5-6). After a brief trip to Japan in 1919, she again returned there and together with her children lived there continuously from 1924 until 1950, except for a nine-months' visit to the United States in the early 1930's (R.

6-7).[19] There is no suggestion that respondent was compelled by imprisonment, by illness, or by any other incapacity to remain in Japan. The facts (as distinguished from legal conclusions) stated in the complaint show that she decided in 1924 to remain in Japan long enough to provide a Japanese education for her son, then aged eight, and Japanese marriages for her daughters, then aged four and ten (R. 6). The question is whether on these facts respondent was "resident within" Japan under § 2(a) of the Act and therefore an enemy ineligible to bring suit under § 9(a).

The court of appeals, apparently equating "resident within" to "domiciled", held that respondent was not "resident within" Japan since, on her allegations in the complaint, during the period 1915-1924, she established a "permanent residence" in the United States to which she intended to return (R. 58). This holding, we submit, overlooks the legislative history and misconceives the purpose of the Act. In our view, the Act clearly contemplates that one who is present in enemy territory during war (other than a person under constraint, such as a prisoner of war) is a resident of that territory and hence an enemy unless he went into that territory as a mere transient or sojourner. It is enough if he went to that territory for a purpose the accomplishment of which will

[19] According to the Assistant Commissioner of Immigration, respondent also claimed an unverified visit in 1929 (R. 49). See fn. 2, *supra*, p. 4.

require an extended stay, or a stay of indefinite duration.

As a matter of statutory usage, "resident" may or may not mean "domiciled". "The definition varies with the statute". *McGrath* v. *Kristensen*, 340 U. S. 162, 175. See Kenman, *Residence and Domicile* (1934), pp. 22-27. In the Trading With the Enemy Act, the language of § 2(a) itself indicates that "resident" was not intended to mean "domicile". The word "resident" is used in a manner which plainly suggests location, rather than status, for the statute speaks of individuals "resident within", with implications of place, rather than "resident of", implying legal relationship.

The legislative history supports the view that the technical concept of "domicile", with its connotations derived from use in divorce, venue, and election statutes, was deliberately avoided by the Congress which enacted § 2. In reply to a question from the floor whether "resident" means "having acquired what we know as a legal residence, a domicile," Mr. Montague, the Chairman of the Committee on Interstate and Foreign Commerce, which handled the bill, stated (55 Cong. Rec. 4922, 65th Cong., 1st Sess.):

> No, it does not. The word "residence" is much broader than the word "domicile". Domicile would give you perhaps the idea of permanency, or a legal habitat, but the word "resident" means a sojourner staying or re-

> siding in. It embraces domicile and is broader than domicile.

That "resident within" was used in a geographical sense is further shown by the explanation offered by another member of the committee (*idem.*, at p. 4850):

> Mr. DeWalt: * * * the enemy * * * is not described in terms of nativity * * * or in terms of citizenship, but *he is described in terms of locality.*
>
> What do I mean by that? The enemy is a party who *lives in* enemy territory * * *. * * * the enemy description is a *local* description. * * * this bill * * * does not in any way affect anyone who is a resident of Germany * * * now living in the United States, nor does it affect in any way a party who is * * * a resident of Austria and who is now temporarily here. [Emphasis supplied.]

Indeed, the term "resident within" was considered of such broad sweep that a question arose whether clarification was necessary in order to eliminate from its scope American soldiers held prisoner in enemy territory. *Id.* p. 4922.

In terms of the objectives and scheme of the Act, a construction of "resident" to mean "domicile" is clearly not warranted. The definition of "enemy" in § 2 is framed on the hypothesis that the presence of the owner behind the enemy's lines puts his American property within the power of the enemy government. Accordingly, the owner, regardless of citizenship or personal sympathies,

is classed as an "enemy". *Kahn* v. *Garvan*, 263 Fed. 909, 915 (S. D. N. Y.). To weaken the enemy and to strengthen the United States, his property is made subject to seizure, and he may not recover it under § 9(a). See *United States* v. *Chemical Foundation*, 272 U. S. 1. Under this statutory scheme, what matters is whether the individual has placed himself within the enemy's territory and within his power; his intention to retain a domicile in the United States is immaterial.[20]

Moreover, it should be emphasized that the same definition of "enemy" is made applicable by the Act not only to the power of seizure but also to the prohibitions against trading with the enemy. It would seem hardly to require argument that the trade which was intended to be prohibited was trade with any person physically within enemy territory and hence subject to the enemy's power. Only by a flat prohibition against trade with all such persons could the Act's objective of prevent-

[20] It may be that a construction of "resident within" which embraces a mere transient or one involuntarily detained in enemy territory furthers the objectives of the Act no less than a construction which includes one remaining for more than transitory purposes. Congress, however, apparently meant to compromise between the exigencies and the hardships of war. The legislative history suggests that those under constraint were not intended to be included. See 55 Cong. Rec. 4922. But it does not follow that persons domiciled elsewhere were not to be included. The legislative history, discussed *supra*, shows quite the contrary.

ing any strengthening of the enemy's sinews of war be effectuated.[21]

Although many cases have arisen under the Trading With the Enemy Act which involved persons within enemy territory, none concerned a person precisely in respondent's situation. In a number of cases arising under sections of the Act other than § 9(a), the courts have held persons "resident within" enemy territory, without any reference to the question of domicile. See, *United States* v. *Krepper*, 159 F. 2d 958, 966 (C. A. 3), certiorari denied, 330 U. S. 824; *Faber* v. *United States*, 10 F. Supp. 602, 605 (Ct. Cls.), certiorari denied, 296 U. S. 596; *Kahn* v. *Garvan*, 263 Fed. 909, 915 (S. D. N. Y.); *Miller* v. *Paul*, 237 Ill. App. 166, 168, 173; *Wirtele* v. *Grand Lodge*, 111 Neb. 302, 304-305, 196 N. W. 510, 511; *Noble* v. *Great American Insurance Co.*, 250 App. Div. 773, 77, 194 N. Y. S. 60, 64, affirmed, 235 N. Y. 589, 139 N. E. 746; *Gregg's Estate*, 266 Pa. 189, 192-193, 109 Atl. 777, 778, certiorari denied, 252 U. S. 588. In several suits under § 9(a), the facts established that the claimant either was detained against his will or was a

[21] It should be noted that while in World War II trade with the enemy was prevented primarily by freezing controls, the provisions of § 3 prohibiting trade with the enemy were regarded as a central feature of the Act as adopted in 1917 and as administered during World War I. Even during World War II those provisions have remained as an alternative source of authority to control transactions involving enemy property or interests.

mere transient and in such circumstances he was held not to be an enemy. See, *McGrath* v. *Zander*, 177 F. 2d 649 (C. A. D. C.); *Stadtmuller* v. *Miller*, 11 F. 2d 732 (C. A. 2); *Vowinckel* v. *First Federal Trust Co.*, 10 F. 2d 19 (C. A. 9); 15 F. 2d 872 (N. D. Cal.); *Sarthou* v. *Clark*, 78 F. Supp. 139 (S. D. Calif.); cf. *Josephberg* v. *Markham*, 152 F. 2d 644 (C. A. 2). These cases are clearly distinguishable on their facts from the present case.

In *McGrath* v. *Zander*, the claimant was an American citizen who went to Germany on a visit in June 1939, with return passage booked for September 9, 1939. Her return to the United States was admittedly prevented by the outbreak of hostilies on September 1, 1939, when sailings were cancelled. In these circumstances the court found that the claimant "became an unwilling sojourner" (177 F. 2d at 653). In *Josephberg* v. *Markham*, the claimant had become insane by 1931; while insane he had, on his doctor's advice, gone to Italy for treatment. The court held, over a sharp dissent, that his presence in Italy "for reasons beyond his control," a presence which was "not attributable as a matter of law to his volition" (156 F. 2d at 649), did not render him a resident of Italy within the meaning of the Act. The *Vowinckel* case involved a claimant who in 1915 had gone to Germany as a surgeon in the German Red Cross; the decisions rested in considerable part on the humanitarian purpose of his presence in Ger-

many and on the specific protections accorded to members of the Red Cross by the Geneva Convention. In the *Stadtmuller* case, the claimant alleged that in 1917 he had upon "the urgent advice of his doctors" left for Germany to settle the estate of his parents and for a rest and medical care, "with the intention of returning to this country 'as soon as possible' " (11 F. 2d at 732), and that while in Germany he was prevented by the outbreak of war from leaving that country to go to Switzerland as he had intended. In the *Sarthou* case, the asserted enemy, having lived in the United States since 1887, went to Germany in October 1940, and remained there until his imprisonment by German authorities in 1942 and death in 1944.

Respondent's position is totally different from that of any of these claimants. Stadtmuller, Zander and the asserted enemy in *Sarthou* could be deemed transient sojourners, caught in enemy territory by the outbreak of the war. Vowinckel was in enemy territory for a special humantarian purpose protected by an international convention. The claimant in *Josephberg* was an incompetent, incapable in law of having any intention. Respondent, on the other hand, had voluntarily made her home in Japan for a purpose which required many years to accomplish. She seeks to bring herself into the same category as a transient or sojourner by allegations that in 1924 she decided to remain in Japan only long enough to provide her

children with a Japanese education and to arrange for the marriage of her daughters, and that these family obligations prevented her return to the United States. Such obligations quite clearly do not constitute the kind of compulsion which the courts will recognize. See Goodrich, *Conflict of Laws* (2d Ed., 1938), p. 45.[22] Nor do these allegations provide any support for the position that respondent was a mere transient. It is apparent, particularly since the children then ranged in age between four and ten, that their education and marriage would require a prolonged and indefinite stay in Japan. In these circumstances, respondent's stay was hardly involuntary and clearly not transitory.

While the present case is thus clearly distinguishable on its facts, we do not deny that the language of the *Stadtmuller* and *Vowinckel* cases appears to adopt the test of "domicile" in its strict sense as the applicable test under § 2(a).[23] The

[22] It may be that the Immigration Act of 1924 (43 Stat. 153, 8 U. S. C. 201 *et seq.*), which prevented respondent's daughters from coming to this country for permanent residence, reinforced respondent's decision to remain in Japan for the purposes of educating them and of arranging marriages there. This circumstance, however, while explaining respondent's motive, did not render her stay legally involuntary. *Cf.* Restatement, *Conflict of Laws* (1934 ed.), § 21e.

[23] In *Zander* (177 F. 2d at 652) the court quoted with approval the statement in *Sarthou* v. *Clark*, 79 F. Supp. 139 (S. D. Calif.) that "resident within" means a "habitation having domiciliary properties." We take this to mean no more than that the stay in enemy territory must be voluntary and for other than transitory purposes.

opinions in those cases make no reference to the discussions in Congress accompanying the adoption of the Trading With the Enemy Act in 1917 which (as we have shown *supra*, pp. 42-43), clearly indicate that the Congress had no such intention.[24] To the extent that they adopt a test of domicile we believe that they are wrong and fail to give effect to the Act's purposes. The error is not one which had occasion to become settled in the administration of the Act after World War I, for with the progressive amendments to § 9(b) of the Act, the definition of residence, as applicable in a suit under § 9(a), lost its importance. Under § 9(b), American and neutral citizens, wherever resident, could recover their entire property, and enemy citizens, wherever resident, could recover 80% of their property. For this reason, while returns were made under § 9(b), the question of residence in enemy territory as affecting the right to return under § 9(a) was not litigated in any other reported case following World War I. The impor-

[24] The reasoning of these cases rests in part on an uncritical carrying over of the reasoning in *Miller* v. *Sinjen*, 289 Fed. 388 (C. A. 8). That case was a suit under § 9(b) of the Act, allowing recovery by United States citizens wherever resident. It dealt with the concept of residence necessary to work an expatriation under the nationality laws; it in no way involved the concept of residence under § 2(a) of the Trading With the Enemy Act.

tance of that question did not revive until after World War II.[25]

In other federal statutes the word "resident" has also been held to embrace an individual who voluntarily remains in a given place for more than transitory purposes. Indeed, dire consequences may attach to one so situated. It may entail loss of citizenship, *Savorgnan* v. *United States*, 338 U. S. 491, or subject one to enforced military service, *United States* v. *Rubinstein*, 166 F. 2d 249, 254 (C. A. 2), certiorari denied, 333 U. S. 868. The intention to go somewhere else at some indefinite future date is not material. What is material is the fact of remaining (*Savorgnan* v. *United States*, 338 U. S. 491, 504-506) and remaining without constraint. *McGrath* v. *Kristensen*, 340 U. S. 162.

In *Savorgnan* v. *United States, supra*, which involved a determination of citizenship status, a material issue was whether petitioner had taken up residence abroad. The Court observed (338 U. S. at pp. 505-506):

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[25] Any possible suggestion that Congress, by amending the Act in other respects during and after the World War, should be deemed to have ratified the construction of the Act embodied in the *Stadtmuller* and *Vowinckel* cases would totally ignore the realities. Congressional legislation during and after World War II proceeded on the premise that all property of enemy nationals could be vested under § 5(b) of the Act; its attention was at no time addressed to the definitions of enemy contained in § 2(a). *Cf. Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480.

> * * * the issue is not what her intent was on leaving the United States, nor whether, at any later time, it was her intent to have a permanent residence abroad or to have a residence in the United States. The issue is only whether she did, at any time between July, 1941, and November, 1945, in fact "reside" abroad. The test of such "residence" is whether, at any time during that period, she did, in fact, have a "principal dwelling place" or "place of general abode" abroad. * * * Her intent as to her "domicile" or as to her "permanent residence," as distinguished from her actual "residence," "principal dwelling place," and "place of abode," is not material. * * *

In construing income tax statutes whose application depends on "residence," the courts have similarly stated that "permanent residence" is not material and that the criterion is "where a man abides or lives," *Comm'r* v. *Fiske's Estate*, 128 F. 2d 487 (C. A. 7), certiorari denied, 317 U. S. 635; *Swenson* v. *Thomas*, 164 F. 2d 783 (C. A. 5); *Comm'r* v. *Swent*, 155 F. 2d 513 (C. A. 4); *Price* v. *United States*, 87 F. Supp. 901 (N. D. Ill.). It is enough if the purpose is such that it requires an extended stay and to that end the person remains. His intention at all times to return to his domicile elsewhere makes him no less a resident. *Comm'r* v. *Nubar*, 185 F. 2d 584 (C. A. 4), certiorari denied, 341 U. S. 925; *Buscaglia* v. *Fiddler*, 157 F. 2d 579 (C. A. 1).

We believe that the application of this test, rather than that of domicile, in the case of the

Trading With the Enemy Act, more faithfully serves the purpose of the Congress which enacted § 2 and is more in harmony with the statutory language. The test of "domicile" results in almost the narrowest possible interpretation of "resident within" and restricts correspondingly the application of the Act, contrary to the settled rule of construction that the provisions of the Act for the seizure and disposition of enemy property should be liberally construed to effectuate the purposes they were enacted to subserve. *United States* v. *Chemical Foundation*, 272 U. S. 1, 10; *Propper* v. *Clark*, 337 U. S. 472, 481.[26]

Even if domicile, rather than residence, had been made the touchstone of the statute, respondent would not appear to qualify. When she returned to Japan in 1924, she intended to stay there for an indefinite period. And "the essential fact that

[26] Respondent's reentry into the United States in 1950 after the vesting of her property in 1943 is of no consequence in this proceeding. It is well settled that a change in the status of an enemy subsequent to the vesting of his property does not absolve the property of its enemy character. *Swiss Nat. Ins. Co.* v. *Miller*, 267 U. S. 42.

Nor can the determination of the Assistant Commissioner of Immigration that respondent did not abandon her domicile in the United States (R. 49-51) foreclose an independent decision by the courts in a matter in which they have exclusive jurisdiction. See, *Walker-Hill Co.* v. *United States*, 162 F. 2d 259, 263 (C. A. 7), certiorari denied, 332 U. S. 771; *Swiss Nat. Ins. Co.* v. *Crowley*, 136 F. 2d 265, 267 (C. A. D. C.), certiorari denied, 320 U. S. 763.

raises a change of abode to a change of domicil is . . . the absence of any present intention of not residing permanently or indefinitely in the new abode." *Williamson* v. *Osenton*, 232 U. S. 619, 624.[27]

Finally, whatever may have been the rule under the 1917 Act, this Court in *Clark* v. *Uebersee Finanz-Korp., A. G.*, 332 U. S. 480, 488, declared that in order to give effect to the 1941 amendments of the Act, the definitions of § 2 must now be regarded as "merely illustrative, not exclusionary". As we have pointed out, the Custodian has, pursuant to § 5(b) as amended in 1941, been authorized to vest property of any "national of a designated enemy country." Under the applicable definitions, property of a German or Japanese citizen present in enemy territory during the war was thus subject to being vested and ordinarily was

[27] The fact that plaintiff's husband may have had an American domicile does not alter matters. The Trading With the Enemy Act law looks to the political and economic realities and aims at preventing the individual's resources from reaching the enemy camp. *Clark* v. *Uebersee Finanz-Korp., A. G.*, 332 U. S. 480; *Silesian-American Corp.* v. *Clark*, 332 U. S. 469. In this context the fiction of identifying the wife's domicile with that of her husband has no application. *United States* v. *Krepper*, 159 F. 2d 958 (C. A. 3); *McGrath* v. *Zander*, 177 F. 2d 649 (C. A. D. C.). Indeed, the fiction has been widely abandoned in other areas of the law. *Taylor* v. *Milan*, 89 F. Supp. 880, 883 (W. D. Ark.); *Younger* v. *Gianotti*, 176 Tenn. 139, 138 S. W. 2d 448, 128 A. L. R. 1422; *Commonwealth* v. *Rutherford*, 160 Va. 524, 169 S. E. 909, Goodrich, *Conflict of Laws* (2d Ed., 1938), p. 58.

vested. In § 32 of the Act, added in 1946, Congress declared that property of such citizens, so present, should not be administratively returned. In order to fulfill the purpose of these World War II enactments, we submit that this Court should hold that an enemy citizen, who was present in enemy territory during the war, must be deemed an "enemy" for all purposes under the Act.

CONCLUSION

As a citizen of Japan the respondent is a "national" of Japan within the intendment of § 39 of the Trading With the Enemy Act and may not recover her property under § 9(a) of the Act. Alternatively, because of her presence in Japan from 1924 to 1950 she was an "enemy" under § 2(a) of the Act and for that reason ineligible to recover under § 9(a). Accordingly, the judgment of the Court of Appeals for the Seventh Circuit should be reversed, and the judgment of the District Court dismissing the complaint reinstated.

Respectfully submitted,

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APPENDIX

1. Trading With the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U. S. C. App. 1 et seq.:

* * * * *

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the succesful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

* * * * *

Sec. 5 (as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839, 50 U. S. C. App. 616):

* * * * *

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, of privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and

further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * *

SEC. 7 (as amended by the Act of November 4, 1918, 40 Stat. 1020). * * *

(c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * * *

SEC. 9 (as amended by the Act of March 4, 1923, 42 Stat. 1511). (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with

the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of

the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

* * * * *

(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned

by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

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SEC. 32 (as added by the Act of March 8, 1946, as amended by the Act of August 8, 1946, 60 Stat. 50, 930, by the Act of August 5, 1947, 61 Stat. 784, and by the Act of September 29, 1950, 64 Stat. 1080 (50 U. S. C. App., Supp. IV, 32)). (a) The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

(1) that the person who has filed a notice of claim for return, in such form as the President or such officer or agency may prescribe, was the owner of such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian, or is the legal representative (whether or not appointed by a court in the United States), or successor in interest by inheritance, devise, bequest, or operation of law, of such owner; and

(2) that such owner, and legal representative or successor in interest, if any, are not—

(A) the Government of Germany, Japan, Bulgaria, Hungary, or Rumania; or

(B) a corporation or association organized under the laws of such nation: *Provided*, That any property or interest or proceeds which, but for the provisions of this subdivision (B), might be returned under this section to any such corporation or association, may be re-

turned to the owner or owners of all the stock of such corporation or of all the proprietary and beneficial interest in such association, if their ownership of such stock or proprietary and beneficial interest existed immediately prior to vesting in or transfer to the Alien Property Custodian and continuously thereafter to the date of such return (without regard to purported divestments or limitations of such ownership by any government referred to in subdivision (A) hereof) and if such ownership was by one or more citizens of the United States or by one or more corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia: *Provided further,* That such owner or owners shall succeed to those obligations limited in aggregate amount to the value of such property or interest or proceeds, which are lawfully assertible against the corporation or association by persons not ineligible to receive a return under this section; or

(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of Italy or of any nation with which the United States has not at any time since December 7, 1941, been at war: *Provided,* That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory; or

(D) an individual who was at any time after December 7, 1941, a citizen or subject of Germany, Japan, Bulgaria, Hungary, or Rumania, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided*, That notwithstanding the provisions of this subdivision (D) return may be made to an individual who, as a consequence of any law, decree, or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, has at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation: *And provided further*, That, notwithstanding the provisions of subdivision (C) hereof and of this subdivision (D), return may be made to an individual who at all times since December 7, 1941, was a citizen of the United States, or to an individual who, having lost United States citizenship solely by reason of marriage to a citizen or subject of a foreign country, reacquired such citizenship prior to the date of enactment of this proviso if such individual would have been a citizen of the United States at all times since December 7, 1941, but for such marriage: *And provided further*, That the aggregate value of returns made pursuant to the foregoing proviso shall not exceed $5,000,000; and in making returns under such proviso the Alien Property Custodian shall to the extent practicable made such returns in the order in which notices of claims therefor were

received and may return any property or interest if the value thereof, taken together with the aggregate value of property and interests already returned or pursuant to such proviso, does not exceed $5,000,000;.

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided*, That notwithstanding the provisions of this subdivision (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since December 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section; and

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof;

(4) that the Alien Property Custodian has no actual or potential liability under the Renegotiation Act or the Act of October 31, 1942 (56 Stat. 1013; 35 U. S. C. 89-96), in respect of the property or interest or proceeds to be

returned and that the claimant and his predecessor in interest, if any, have no actual or potential liability of any kind under the Renegotiation Act or the said Act of October 31, 1942, or in the alternative that the claimant has provided security or undertakings adequate to assure satisfaction of all such liabilities or that property or interest or proceeds to be retained by the Alien Property Custodian are adequate therefor; and

(5) that such return is in the interest of the United States.

* * * * *

SEC. 39 (as added by the Act of July 3, 1948, 62 Stat. 1246 (50 U. S. C. App., Supp. IV, 39)). No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal or otherwise affect the operation of the provisions of section 32 of this Act or of the Philippine Property Act of 1946.

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2. Pub. Res. No. 8 of July 2, 1921, 42 Stat. 105, 106:

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SEC. 5. All property of the Imperial German Government, or its successor or successors, and of all German nationals which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, and all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals which was on December 7, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or any of its officers, agents, or employees from any source or by any agency whatsoever, shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Governments respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise, and also

shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce and industrial property rights, and until the Imperial German Government and the imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial and Royal Austro-Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America.

* * * * *

3. EXTRACT FROM PUBLIC [HARRISON] RESOLUTION NO. 53, 73D CONGRESS [48 Stat. 1267]:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That so long as Germany is in arrears in any payments of principal or interest, including interest at the rate of 5 per centum per annum on principal installments not paid when due, under the debt-funding agreement between Germany and the United States, dated June 23, 1930, with respect to Germany's obligations remaining on account of awards, including interest thereon, entered and to be entered by the Mixed Claims Commission, United States and Germany, all payments, conveyances, transfers, or deliveries of money or property or the income, issues, profits, and/or avails thereof authorized or

directed to be made under the Trading with the Enemy Act, as amended, or the Settlement of War Claims Act of 1928, as amended, whether or not a judgment or decree has been entered with respect thereto, shall be postponed and the money or property, or the income, issues, profits, and/or avails thereof reserved: *Provided, however,* That such of the funds as are from time to time available (without taking into consideration interest thereafter accruing) under the Settlement of War Claims Act of 1928, as amended, for the payment of principal and interest upon awards of said Mixed Claims Commission shall be applied when available to the payment of principal and interest upon such awards in the same manner and to the same extent as though certain of the payments provided for in said Act had not been postponed under this resolution: *Provided further,* That the President may, in his sole discretion, remove the restriction as to any of the cases or classes of cases in relation to which payments, conveyances, transfers, or deliveries have been postponed under this resolution: *And provided further,* That the President is authorized to determine, for the purposes of this resolution, the period or periods in which Germany is in arrears in the payments hereinbefore described, and his determination thereof shall not be subject to judicial review.

[Approved June 27, 1934.]

4. Joint Resolution of May 7, 1940, 54 Stat. 179:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. 411), as amended, is hereby amended to read as follows:

"During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, and any transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property in which any foreign state or a national or political subdivision thereof, as defined by the President, has any interest, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person to furnish under oath, complete information relative to any transaction referred to in this subdivision or to any property in which any such foreign state, national or political subdivision has any interest, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed."

SEC. 2. Executive Order Numbered 8389 of April 10, 1940, and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed.

5. First War Powers Act, 1941, Title III, c. 593, 55 Stat. 838, 840:

* * * * *

SEC. 302. All acts, actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by, or pursuant to the direction of, the President or the Secretary of the Treasury under the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, which would have been authorized if the provisions of this Act and the amendments made by it had been in effect, are hereby approved, ratified, and confirmed.

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6. War Claims Act of 1948, c. 826, 62 Stat. 1240, 1246:

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SEC. 12. The Trading With the Enemy Act of October 6, 1917, as amended, is hereby amended by adding at the end thereof the following new section:

"SEC. 39. No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal or otherwise affect the operation of the provisions of section 32 of this Act or of the Philippine Property Act of 1946."

SEC. 13. (a) There is hereby created on the books of the Treasury of the United States

a trust fund to be known as the War Claims Fund. The War Claims Fund shall consist of all sums covered into the Treasury pursuant to the provisions of section 39 of the Trading With the Enemy Act of October 6, 1917, as amended. The moneys in such fund shall be available for expenditure only as provided in this Act or as may be provided hereafter by the Congress.

* * * * *

7. Executive Order No. 8389, April 10, 1940, 5 F. R. 1400, as amended, 6 F. R. 2897:

SEC. 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

* * * * *

SEC. 5. * * *

E. The term "national" shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order.

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined * * *

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8. Executive Order No. 9193, July 6, 1942, 7 F. R. 5205, as amended by Executive Order 9567, 10 F. R. 6917:

2. The Alien Property Custodian is authorized and empowered to take such action as he deems necessary in the national interest, in-

cluding, but not limited to, the power to direct, manage, supervise, control or vest, with respect to:

(a) Any business enterprise within the United States which is a national of a designated enemy country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by an enemy country or national thereof;

(b) Any other business enterprise within the United States which is a national of a foreign country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by a foreign country or national thereof, when it is determined by the Custodian and he has certified to the Secretary of the Treasury that it is necessary in the national interest, with respect to such business enterprise, either (i) to provide for the protection of the property, (ii) to change personnel or supervise the employment policies, (iii) to liquidate, reorganize, or sell, (iv) to direct the management in respect to operations, or (v) to vest;

(c) Any other property or interest within the United States of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, a designated enemy country or national thereof * * *

* * * * *

10. For the purpose of this Executive order:

(a) The term "designated enemy country" shall mean any foreign country against which the United States has declared the existence of a state of war (Germany, Italy, Japan, Bulgaria, Hungary, and Rumania) and any other country with which the United States is at war in the future. The term "national" shall have the meaning prescribed in section 5 of Executive Order No. 8389, as amended: *provided, however,* that persons not within designated enemy countries (even though they may be within enemy-occupied countries or areas) shall not be deemed to be nationals of a designated enemy country unless the Alien Property Custodian determines: (i) that such person is controlled by or acting for or on behalf of (including cloaks for) a designated enemy country or a person within such country; or (ii) that such person is a citizen or subject of a designated enemy country and within an enemy-occupied country or area; or (iii) that the national interest of the United States requires that such person be treated as a national of a designated enemy country. For the purpose of this Executive Order any determination by the Alien Property Custodian that any property or interest of any foreign country or national thereof is the property or interest of a designated enemy country or national thereof shall be final and conclusive as to the power of the Alien Property Custodian to exercise any of the power or authority conferred upon me by section 5 (b) of the Trading With the Enemy Act, as amended.

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